

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

THE STATE OF WISCONSIN,

Plaintiff,

Case No. 06-C-0582-C

v.

AMGEN INC., ET AL.,

Defendants.

**ANSWERS AND OBJECTIONS OF ZLB BEHRING, L.L.C.,
F/K/A AVENTIS BEHRING, L.L.C., TO PLAINTIFF'S
SECOND SET OF INTERROGATORIES TO ALL DEFENDANTS**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Western District of Wisconsin, and, to the extent applicable, Wisconsin Rule of Civil Procedure 804.08, Defendant ZLB Behring, L.L.C., f/k/a Aventis Behring, L.L.C. ("Behring"), by its undersigned counsel, hereby objects and responds to Plaintiff's Second Set of Interrogatories.

PRELIMINARY STATEMENT

Behring incorporates the Preliminary Statement contained in Behring's Answers to Plaintiff's First Set of Interrogatories dated July 15, 2005.

GENERAL OBJECTIONS

To the extent an objection is not addressed below, Behring incorporates its Objections to Plaintiff's First Set of Requests for Production of Documents and First Set of Interrogatories.

Behring objects to Plaintiff's "Definitions" to the extent Plaintiff intends to expand upon or alter Behring's obligations under the Federal Rules of Civil Procedure, the Court's Local Rules, and, to the extent applicable, the Wisconsin Rules of Procedure, in responding to the Interrogatories. Behring will comply with applicable rules of civil procedure in providing its answers to Plaintiff's Second Set of Interrogatories.

Behring objects to each interrogatory to the extent that it calls for the identification or production of documents or information not relevant to the issues in this action and not reasonably calculated to lead to the discovery of admissible evidence.

Behring objects to Plaintiffs' definition of "Average Manufacturer Price" or "AMP" on the ground that it is vague and ambiguous. Behring further objects to this definition to the extent it purports to state an accurate or legally significant definition.

Behring objects to the extent that any interrogatory seeks information that is protected from disclosure by the work product doctrine, the attorney-client, accountant-client, consulting expert, or investigative privileges, by any common interest or joint defense agreement, or by any other applicable privilege or protection.

Behring objects to each interrogatory to the extent that it calls for information not within its possession, custody or control. In responding to these interrogatories, Behring has undertaken or will undertake a diligent and reasonable search of documents and information within Behring's current possession, custody or control.

Behring objects to each interrogatory to the extent that it calls for information that is confidential, proprietary, and/or a trade secret of a third party.

Behring objects to each interrogatory to the extent that it seeks disclosure of information that is a matter of public record, is equally available to the Plaintiff, or is already in the possession of the Plaintiff.

Behring expressly incorporates the above General Objections into each specific answer to the interrogatories set forth below as if set forth in full therein. The answer to an interrogatory shall not operate as a waiver of any applicable specific or general objection to a request.

ANSWERS TO INTERROGATORIES

Subject to the Objections to Definitions stated above, and without waiving or limiting and expressly preserving all such objections, Behring responds to Plaintiff's individually numbered Interrogatories as follows:

INTERROGATORY NO. 6: Do you contend that during the Defined Period of Time the State of Wisconsin was not prohibited by federal law from determining, and could have determined, the AMPs of the targeted drugs based on the Unit Rebate Amount for such drugs provided to the State by the federal government pursuant to the Medicaid rebate statute, 42 U.S.C. § 1396r-8?

ANSWER: Behring objects to Interrogatory No. 6 on the grounds that it is vague, ambiguous, and calls for a legal conclusion. Behring also incorporates herein its objections to Plaintiff's definitions of the terms "AMP" and "Defined Period of Time."

Subject to and without waiving these objections, Behring states that federal law does not prohibit and did not prohibit during the Defined Period of Time the State of Wisconsin from estimating or determining AMP. In fact, for some drugs, the State can derive and could have derived during the Defined Period of Time the AMP from the Unit Rebate Amount. Behring also is unaware

of any federal or other prohibition during the Defined Period of Time that would have prevented the State from requesting AMP data directly from the manufacturers or enacting a state statute that would have required its submission.

INTERROGATORY NO. 7: If the answer to Interrogatory No. 1 [sic] is anything other than an unqualified “no,”;

- a. state all bases for such contention, and
- b. identify all documents that support such contention.

ANSWER: Behring objects to Interrogatory No. 7 on the grounds that it is vague, ambiguous, overbroad, and burdensome. Behring further objects to this interrogatory to the extent it seeks information that is publicly available to the Plaintiff.

Subject to and without waiving these objections, Behring incorporates by reference its answer to Interrogatory No. 6 and further states that 42 U.S.C. § 1396r-8 and the state Medicaid statutes and regulations for those states that require manufacturers to submit AMP data provide support for Behring’s answer to Interrogatory No. 6.

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CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2006, a true and correct copy of the foregoing document was served on counsel of record *via* LexisNexis File & Serve pursuant to Case Management Order No. 1.

/s/ Clifford Joe Cavitt
Clifford Joe Cavitt

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